The Netherlands

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NETHERLANDS

COUNTRY INFORMATION

The Kingdom of the Netherlands consists of the Netherlands, the Dutch Antilles, and Aruba. The Charter of the Kingdom *(Statuut van het Koninkrijk der Nederlanden)* specifies that the three parts of the kingdom have their own power of legislation. Therefore, this contribution is limited to the Netherlands, located in Western Europe. The country is bordered by the North Sea, Belgium, and Germany. Although small (41,532 square kilometers), it has a long coastline (450 kilometers) and always has been closely linked to the sea, which is both the country's friend and its foe. Situated in the originally swampy area around the deltas of the rivers Rhine, Meuse, and Schelde, most of the country consists of land reclaimed from the sea by building dikes and draining polders. In fact, about half of the country is below sea level, often as much as 5 meters. This became horribly apparent when, in 1953, a combination of high tide and severe storm flooded large parts of the western provinces, drowning 1,835 people. This disaster led to the building of even more dikes along the seashore. Small floodings in 1992 and 1994 and the threat of larger ones along the rivers have now led to the major strengthening of river dikes.

The Dutch climate is mild. The weather is much influenced by the relatively warm Gulf Stream through the North Sea, causing cool summers and mild winters.

Sixteen million rather wealthy people inhabit this flat country. The Dutch are the tallest in the world, supposedly because of good nutrition. Life expectancy at birth is seventy-eight years for women and seventy-five for men. After large-scale immigration in recent decades from the former colony Suriname and countries around the Mediterranean—notably Morocco, Turkey, Greece, and Italy—minority ethnic groups now comprise about 10 percent of the population. Although the country is a Protestant nation, the largest religious group is Roman Catholics (about a third), and a quarter of the population is Protestant; other religious groups each have less than 5 percent. The official language is Dutch. Although the capital is Amsterdam, The Hague (in Dutch called both Den Haag and 's-Gravenhage) is the seat of government.

The Netherlands is a modern industrialized nation with much natural gas and petroleum. Even though the country is among the most densely populated in the world, it succeeds in being a large exporter of agricultural products. A highly mechanized agricultural sector employs no more than 4 percent of the labor force but provides large surpluses for the food-processing industry and for exports. Thus the Netherlands ranks third worldwide in value of agricultural exports, behind the United States and France. The central position of the country guarantees an important role for transport and foreign trade in the economy, in which both the Harbor of Rotterdam (the largest in the world) and Schiphol Amsterdam Airport (much larger than strictly necessary for such a small country) play an important role. Most trade, however, is within the European Union, that is, 78 percent of the export and 61 percent of the import.

The Netherlands is a member of the European Union and is participant to almost all relevant treaty organizations. Please note that the Netherlands is often referred to as Holland, but Holland in fact is only the western, but admittedly the most prosperous and the most populated, part of the country.

HISTORY

The Netherlands became independent from Spain in 1579. In those days the country was larger, also including parts of the present Belgium and Luxembourg. The 80-year war against Spain led to what we now call the Golden Age of the Netherlands. Trade and art flourished. After a steady decline, the French occupied the country in 1795.

Prior to the French occupation (1795–1813) of the Netherlands, the country was a federal republic that consisted of rather autonomous provinces and consequently had a judicial system that resembled a hodgepodge. Although Roman-Germanic law provided a generally accepted legal framework, customary law governed much of legal decision making. The French not only brought the system of codification to the Netherlands, but also left the country with a uniform, hierarchical structure of courts.

The history of the present-day Dutch legal system really started during the occupation in 1811 when the Netherlands was incorporated in the French Empire. This gave the country a unified legal system in which law was codified. After independence the first Dutch Constitution stipulated that all Dutch law should be incorporated in codes.

In 1814 the country became a constitutional monarchy and was unified with the present-day Belgium. In 1831, however, Belgium seceded and formed a separate kingdom. During the nineteenth century, industrialization in the Netherlands was much slower than in the rest of Western Europe, resulting in the saying, "Everything comes twenty years later in the Netherlands."

The country remained neutral during World War I. That war in fact brought relative wealth to the country, because the Dutch kept on trading with all combating parties. During World War II the Netherlands was occupied after a ten-day war with Germany in May 1940. The occupation lasted until May 1945, although the Allied forces in the second half of 1944 liberated the southern part. That winter, supplies became so scarce in Holland that it is still called the Hungerwinter.

Especially during the first half of the twentieth century, Dutch society was strongly divided in so-called *zuilen,* parts of society that are divided according to religious and political denominations. The most important *zuilen* in which Dutch society was divided were Catholics, Protestants, Socialists, and Humanists (an extensive discussion is given in Kossmann 1978, 567–574). To ensure a stable society, the government system was built on negotiation and compromise among the denominations, rather than antagonism between the *zuilen.* Although the *zuilen* became less and less important in the decades after World War II, the compromising nature of Dutch society has remained. This form of "pacificatory democracy" (Kossmann 1978, 569) requires, among others, a cabinet to appoint both political allies and allies of the opposition to important offices. If a cabinet did not, it could likewise expect the present opposition to fill every important vacancy with their own allies when the opposition came into power. But, more important, appointment of allies of the opposition is an essential part of the compromising structure that ensures a stable government, even with incompatible political and religious *zuilen.* This produces a tendency to depoliticize political questions (Lijphart 1975). The custom to appoint allies of the opposition is thus firmly established in the Netherlands in appointments to, for instance, mayors, commissioners of the queen (*commissarissen der Koningin;* the governors in each province), or members of the Raad van State (State Council; comparable to the French Conseil d'Etat). The compromising nature is also notable in labor relations, where labor unions and employer organizations work together instead of being antagonistic parties. It also can be found in law, as will be shown below.

LEGAL CONCEPTS

Constitution

The Netherlands is a constitutional monarchy where neither the constitution nor the monarch is very important. The constitution is of little importance for two reasons. First, the constitution itself bans judicial review of acts of Parliament to the constitution. Thus any interpretation of the constitution is left to Parliament itself and citizens cannot challenge law on constitutional arguments in

court. Second, treaties supersede the constitution. This is most important for the European Convention on Human Rights. The decisions of the European Court of Human Rights, therefore, are binding in the Netherlands and are now the vehicle by which most of the typical constitutional rights are enforced.

The monarch, presently Queen Beatrix, is of little importance either. This is also caused by a provision in the constitution, which says that the king is immune and the ministers are accountable. The monarch only plays a rather modest role in the formation of a new Cabinet of Ministers after an election for Parliament.

The roots of the Dutch Constitution (Grondwet) lie in the *Trias Politica,* the separation of the legislative, administrative, and judicial powers. Though the first constitution in 1814 has been changed and enlarged many times, still several concepts of the *Trias Politica* remain. However, constitutions stemming from the *Trias Politica* can have different forms, for example the French and the American constitutions. The original Dutch Constitution resembled the French version of the idea of separation of powers, in which the democratic element of political decision making was dominant. In essence, majority rule determined political questions and therefore also the outcome of the legislation process. The question of constitutional incompatibility had to be decided by the Parliament itself, not by the judiciary; the judiciary merely was the *bouche de la loi,* that is, should strictly apply legislation without its own interpretation.

Thus, contrary to the American version where the division of powers has led to a system of checks and balances, the French and the Dutch versions have led to a *separation* of powers. That might be one of the reasons that in the nineteenth century little emphasis was given to possible mistakes of the executive or the legislator. One could not imagine that these bodies would make mistakes or take decisions that were unjust or disproportionately disadvantageous for individuals or groups of citizens. Dominant legal doctrine considered democratic decision making the best guarantee against these kinds of failures.

The Dutch Constitution prescribed codification of the law that resulted in the civil code of 1838 and the criminal code of 1881. These codes, as revised, are still in force today. Shortly after World War II, a fundamental recodification of the civil code was undertaken. The *Nieuw Burgerlijk Wetboek* (New Civil Code) came into force in portions in the last two decades. The basic idea of extensive codification in the Netherlands—as, for instance, in Germany—was that each and every thinkable subject could be incorporated in a code, and thus the role of the judge was no more than to apply a rule of law to a specific case (*le bouche de la loi* after Montesquieu 1834/1748). The body of legislative rules was paramount and any development of the law through precedents was out of the question. See, however, the developments discussed below.

Government

Legislative power is exercised by the Crown (in fact the Cabinet of Ministers) and Parliament (Staten-Generaal), which is comprised of two chambers. The seventy-five members of the First Chamber (Eerste Kamer) or upper house are indirectly elected through the twelve provincial councils; the 150 members of the Second Chamber (Tweede Kamer) or lower house are directly elected by popular vote. All serve a four-year term, but the cabinet can dissolve any or both of the chambers to bring about new elections at any time. New bills can be proposed by the cabinet or by the Second Chamber—the latter happens not very often. The First Chamber may only approve or reject the bills without amending them.

Because of the system of proportional elections, Dutch Parliament is comprised of many different parties. Usually between twenty and thirty different political parties partake in elections. At present, nine different parties are represented in the First and Second Chambers together. The largest parties never attract much more than 30 percent of the votes. Dutch governments therefore are always coalition government of two or more parties.

In the legislative process the Council of State also plays a role. The council is composed of the monarch, the heir apparent, and appointed councilors. The advice on legislation of the Council of State is compulsory.

National and International Law

Since World War II Dutch law is more and more intertwined with international law, international treaties, and the law and case law of supranational institutions. This development has largely restricted Dutch political autonomy, not only because many important decisions are no longer made in The Hague but in Brussels as a result of the Dutch membership of the European Union, but also because the government and the legislator are bound by the case law of some international courts. The fact that the interpretation of many treaties is reserved for independent international courts had a rather unexpected impact on Dutch politics, especially in the field of fundamental human rights.

A major step to the internationalization of law was made in the 1953 change of the constitution, in which it was explicitly stated that national law should not be applied if this is incompatible with a self-executing provision of a treaty. Thus the constitution made it possible to review national law, including constitutional law, against standards established by certain provisions of treaties, and no distinction was made between treaties that entered into force before or after the enactment of national law.

Though this prevalence of treaties was properly taught in the law faculties in the decades that followed, it was of no great practical importance. In that period the Supreme Court tried to avoid any reference to international law by giving an interpretation—sometimes rather widely—of a comparable constitutional provision that corresponded to the international treaty. The year 1980 was a turning point, partly due to the spin-off of the academic courses. By then the Supreme Court began to review national law to international law openly, especially to the European Convention of Human Rights. Please note that the Netherlands has no constitutional court.

After 1980 many citizens started to use the right to appeal individually to the European Courts of Human Rights for alleged violation of the Convention, which resulted in judgments of the European Court in which Dutch national law was considered to be in conflict with specific provisions of that Convention. International and supranational law, as interpreted by the European Court or the EC Court, has a considerable influence on national law, for instance by prohibiting the legislator to make any rule that is in conflict with that interpretation. So, one of the major components of the judicialization of politics could be found in the restrictions of government authority by the development of the international and supranational law and the case law of the international courts.

Constitutional Review

As mentioned earlier, the Dutch Constitution stems from a tradition in which there is no supremacy of the judiciary over the legislator. An important argument for the so-called inviolability of acts of Parliament was that Parliament itself, as the representatives of the people, was best equipped to judge if a certain act of Parliament was incompatible with the constitution. This opinion had many strong adherents in the first half of the last century. Nevertheless the discussion is revived from time to time.

The discussion on the judicial review was fed by the increasing influence of international law on case law of the Supreme Court and the lower courts. Nowadays we find ourselves in a peculiar situation: An act of Parliament can be declared incompatible with self-executing provisions of international treaties, but not with the constitution. This holds even when in the treaty and in the constitution essentially the same principle is included in about the same words. This is an inconsistency that is impossible to explain to non-Dutch scholars (Kortmann 1990, 336).

Another argument in favor of the ban on judicial review, the argument that Parliament itself is able to maintain a certain degree of quality in its legislative function, has become less convincing during the last years. Decreasing dualism between government and Parliament and the speed and pressure under which some drafts have passed Parliament have occasionally resulted in a legislative botch job. A notorious example is the so-called Harmonization Act of 1988, in which rights of university students were curtailed in a retrospective manner. Ultimately an appeal to the judge failed, because the Supreme Court upheld the principle that an act of Parliament is inviolable. The Court, however, underwrote that some aspects of the Harmonization Act were in conflict with general, though unwritten, rules of law and announced that it would not exclude a sort of judicial review in the future (Van Koppen 1992).

Civil Law

The Dutch Supreme Court has come far from the *bouche de la loi* ideology of the nineteenth century. The Supreme Court always had some influence on the law, merely by the interpretations of statutes given in the Court's decisions. These interpretations, of course, set precedents, both for the Court itself and for lower courts. But the important task of looking after the uniformity of the law has gradually been overshadowed by the Court's function in developing the law. Starting with the hallmark decision in *Lindenbaum v. Cohen* (1919; *see* Van Koppen 1990), the Supreme Court has taken up the role of deputy-legislator. That very decision—in which the Supreme Court widened the definition of tort from a mere breach of written rights or duties to breach of duty of care—for instance, made a bill with the same subject superfluous.

In recent years the Supreme Court gave new interpretations to existing statutes or formulated new rules for unforeseen problems, making legislation unnecessary, even on issues where a clear political majority in Parliament would have produced legislation relatively swiftly. More important, the Court produced case law on issues, such as the right to strike, euthanasia, and abortion, where the strongly divided Parliament was unable to pass legislation. Supreme Court decisions play such an important role in these matters because of some of the peculiarities of Dutch politics.

For a long time the Dutch government has been built on a coalition of two or three, sometimes even five, political parties. No party has ever reached a majority in Parliament. When one of the coalition parties agrees with the opposition on a hot issue and could join with the opposition into a majority vote on such an issue, that party yet has to consider the opinion of the coalition partner in order to avoid the risk of breaking up the coalition. So even if there is a majority in the Parliament as a whole for a political choice on a certain issue, it is not sure that that choice will be made. More often the decision on these issues is postponed and the Supreme Court has to fill the gap.

The permanent coalition character of Dutch government also introduces compromise in the content of legis-

lation, because clear-cut legislation on controversial issues would often risk the cooperation in the coalition. This means that the compromise mostly is of a diffuse and vague nature. Statutes, then, often need extensive interpretation before they can be applied in practice, giving the judiciary an important role in such controversial matters.

In the last four decades coalition parties became even more involved with each other by the introduction of the so-called *regeeraccoord* (government agreement), an extensive written document on all major and many minor political issues. The agreement not only binds members of the cabinet, but also members of the parliamentary majority. Voting against any government proposal covered by the agreement is considered a breach of political contract and endangers the coalition. The government agreement, made in covert negotiations, in fact binds members of Parliament to cabinet decisions and thus turns the traditional dualism between cabinet and Parliament into a monistic ruling by the cabinet. This enables the government to run bills through Parliament on sheer political force, sometimes producing acts of low quality. In such political circumstances the Supreme Court receives a new function: guardian of the quality of the law (Van Koppen 1990).

Criminal Law

When the Dutch criminal code was adopted by Parliament in 1886, the importance of prison as the primary sanction was paramount. Fines were meant for the most minor cases. The Dutch criminal system has always been quite lenient, although in recent decades the average sentence severity has been nearing the European average. After World War II, punishment has gradually been reformed. After expanding the possibilities of financial, rather than prison, punishment, suspended sentences have become possible, and a major shift has occurred toward community service as a principal penalty for less serious crimes.

After World War II new crimes were introduced in the code—for instance drug-related crimes, environmental crimes, and discrimination—while others have been decriminalized—for instance homosexual behavior, abortion, and, most recently, euthanasia.

Criminal procedure is done in an inquisitorial system. Professional judges, either on a three-judge panel or sitting alone, determine both guilt and the sentence. There is no lay element in Dutch criminal procedure. The Dutch system is characterized by an emphasis on the pretrial phase. In the pretrial phase the police conduct investigations. These are done under the formal heading of a public prosecutor (*officier van Justitie*). In major crime cases further investigations can be done by a judge commissioner (*rechter-commissaris;* comparable to the French *juge d'instruction*). The involvement of a judge commissioner is compulsory when the suspect is detained in custody, and if certain investigative acts are done, as phone tapping and house searches. The police, prosecution, and judge commissioner thus build a dossier, which is the central element in Dutch criminal procedure.

The grounds for pretrial detentions in the Netherlands are the danger of the suspect or the interest of the investigation. Suspects can be detained, first by the police for three days, then by a short continuation by the judge commissioner, and thereafter by the court, deciding in closed chambers. Together these continuations cannot take longer than 106 days, after which the trial should start, at least formally. If pretrial detention of the suspect is no longer deemed necessary, he or she is released. There is no system of bail in the Netherlands.

Prosecutors have almost omnipotent powers to dismiss cases outside of court through the use of the conditional or unconditional waiver and by offering the suspect a transaction. To a limited extent the police have the same power. There is no plea bargaining.

Suspects have a right to legal council. If the suspect may be deprived of liberty and cannot afford an attorney, the state pays for legal counsel. The attorney, however, has no automatic right to be present at suspect or witness interrogations by the police, but has such a right for interrogations by the judge commissioner. The attorney also has the right to ask the prosecutor or judge commissioner to add documents to the dossier. Dutch attorneys seldom conduct their own investigations or have a private detective do it for them.

The emphasis on the dossier is quite notable during the trial stage. Most trials are not more than a quick review of the dossier, especially if the suspect has confessed. Trials can be as short as half an hour and trials longer than a full day are very rare. In most trials no witnesses are heard, since their statements are in the dossier in the form of a sworn statement by police officers or a report by the judge commissioner of his or her interrogations. The prosecution can call witnesses; the defense has to ask the prosecution to call witnesses on its behalf. The prosecution can refuse to call certain or all witnesses, even with the argument that such is not in the interest of the defense. This decision can be appealed to the court, but if granted will cause an adjournment of the trial.

The purpose of the Dutch trial is to discover the truth and to a much lesser extent to secure a fair trial. Based on the dossier, questioning is done by the court, while the prosecution and attorneys can ask supplementary questions. Cross-examination does not exist.

During trial the suspect does not have to take a formal position of pleading guilty or not guilty. In all cases the court has to review the evidence, even after the suspect has confessed, although in the latter kind of case evidence tends to generate little discussion during trial.

The Dutch trial is a one-phase trial; there is no separate sentencing hearing. All documents that are relevant for the sentence, as for instance reports on the suspect by psychiatrists and psychologists and the suspect's rap sheet, are part of the dossier and are thus known to the judge while determining guilt.

Dutch courts have wide discretion in imposing sentences. For each crime and misdemeanor there is a specific maximum—for instance, twelve years' imprisonment for involuntary manslaughter—but there is a general minimum for all, namely one day in jail or a 15-guilder fine. The court can even declare a suspect guilty without punishment. That was common in recent years for doctors who were formally charged with murder for committing euthanasia and were found guilty.

In sentencing, the court can choose between penalties and measures. Penalties include imprisonment, jail detention, community service, and fines. Life imprisonment is only rarely given and only for murder or manslaughter with aggravating circumstances. Community service, introduced in 1989, can be given if the defense asked for it and only instead of prison terms of less than six months. Sentences can be suspended wholly or in part under conditions set by the court. The death penalty was abolished in the Netherlands in 1870.

Measures can be imposed upon suspects even if the suspect has been acquitted. They include seizure of objects from the suspect, confiscation of the profits of a crime, and an order for detention in a psychiatric hospital for a period of up to one year if the individual presents a danger to him- or herself, to others, or to property.

If the court deems the suspect insane, no punishment shall follow, but the suspect can be committed to a psychiatric prison for compulsory treatment. If the suspect is deemed partly insane, both a prison term and compulsory treatment can be sentenced.

CURRENT COURT SYSTEM STRUCTURE

Courts for Civil and Criminal Cases

The Dutch court system is organized in four layers (see figure). The lowest level, the cantonal court (*kantongerecht*), hears petty offenses and small claims. In addition, the cantonal court has original jurisdiction for some specific civil cases, regardless of amount of controversy, among which are cases on tenancy and labor. The trial court (*arrondissementsrechtbank*) hears all other criminal and civil cases. The trial court also hears appeals from decisions of the cantonal courts in its district. Decisions of the trial court sitting as a court of first instance are appealable to the court of appeal (*gerechtshof*). In ordinary appeals the cases are dealt with de novo. The sixty-one cantonal courts, the nineteen trial courts, and the five courts of appeal are structured hierarchically.

As a rule, two stages of appeal are possible in each procedure: after the decision in the first instance, appeal to the next higher court is possible, and the second decision is subject to appeal in cassation to the Supreme Court. As in the first appeal, leave to appeal in cassation to the Supreme Court is not required. In an appeal in cassation, however, the facts as determined by the lower courts are not reviewable; the Supreme Court can only decide on issues of law.

Both criminal and civil cases are tried by professional judges; a jury is unknown in the Netherlands. Cantonal court judges sit alone and as a rule they try both criminal and civil cases. In the trial courts and the courts of appeal, specialized divisions exist, in which three judges sit en banc. Due to the heavy caseload, however, the exception of an *unus iudex* (a single judge) in the trial courts has recently come to be the rule. At the Supreme Court five justices usually sit on a case, but the number can be reduced to three where appropriate.

Supreme Court

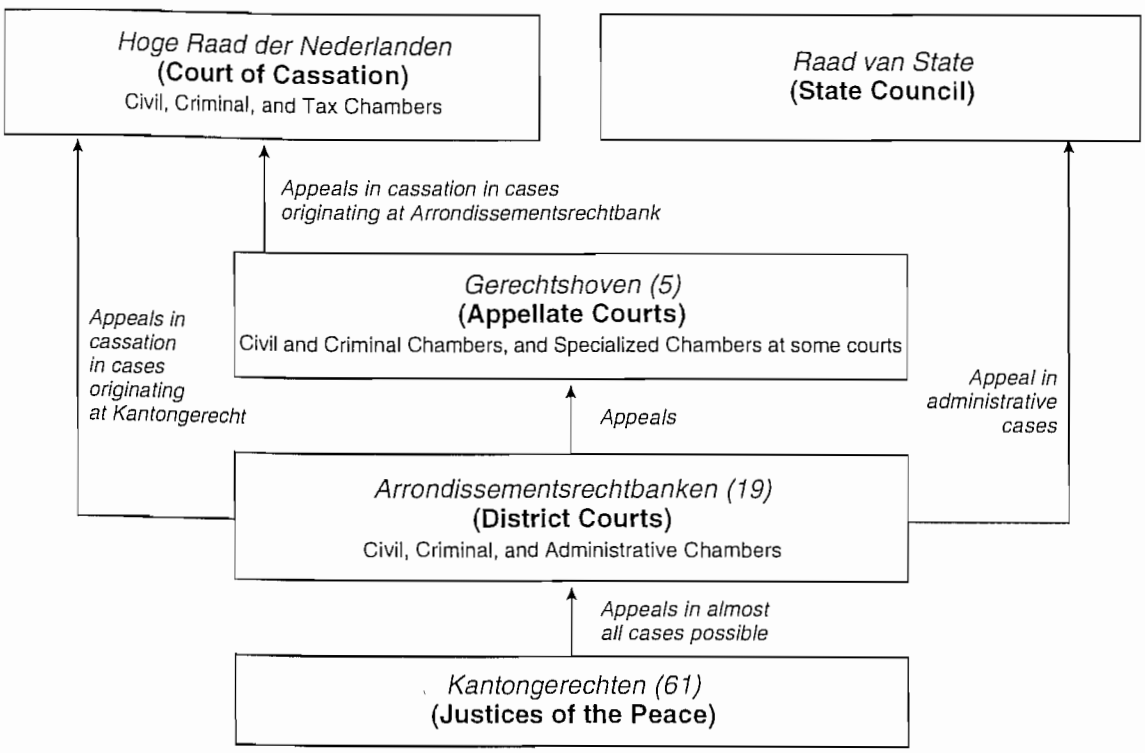
The Supreme Court (Hoge Raad der Nederlanden), as any Dutch court, announces all of its decisions as unanimous and judges are obliged to maintain secrecy on their deliberations. As in most other countries, no leave to appeal is necessary and the Supreme Court has no control over its docket. Public prosecution at the Supreme Court is represented by one procurator-general and fifteen assistant procurators-general. Both justices and procurators-general are appointed for life (i.e., until the age of seventy) and are fully independent of the government. The independence of procurators-general is justified on the grounds that they may have to prosecute members of Parliament and cabinet members before the court. Such a prosecution, however, has never been instituted.

The procurators-general play a role in both criminal and civil cases. In all civil cases and many criminal cases, a procurator-general renders an opinion before the Court itself starts deliberations. These opinions are published together with the decision of the Court. Thus, the opinions of the procurators-general in which they disagree with the later decision of the Court (about 30 percent of the cases) are the nearest the Dutch come to dissenting opinions.

The Supreme Court is divided into three divisions: the civil division, the criminal division, and the so-called third division. The latter, established in 1919, has jurisdiction in tax cases and expropriation cases. Unlike the civil and criminal divisions, the third division is split into two fixed panels, which divide cases depending on the statute involved. The third division as a whole, however, meets weekly at lunch to ensure unity of decision making. The full court rarely meets, unlike for example the German Bundesgerichtshof or the French Cour de Cassation.

Since the Supreme Court cannot consider the facts of

Structure of Netherlands Courts



the case, the Court refers cases to a lower court after reversal, if the facts of the case need further consideration. These cases may be referred to the court that gave the decision that was appealed or another court at the same level.

SPECIALIZED JUDICIAL BODIES

Special chambers of trial courts deal with most special legal cases. There are, for instance, special chambers for juvenile cases and for minor economic offenses. Only for administrative cases, there exist specialized judicial bodies. A case against a government decision—local, provincial, or central—always has to start with a complaint with the body that issued the decision. To that second decision, in most cases, appeal is possible to the administrative chamber of the trial court. After that decision, appeal is possible to the department of administrative decisions of the State Council (Afdeling Bestuursrechtspraak van de Raad van State). At this level, however, there are also other specialized appellate bodies, as for instance the Central Council of Appeal (Centrale Raad van Beroep) for civil servant cases and social insurance cases.

STAFFING

Judges and Prosecutors

There are two courses to becoming a judge. The first is participation in the judges' training, which also is the training for public prosecutors. Immediately after completing a university law degree, one can apply for a position in the training, which takes six years. The training includes courses and apprenticeships of two years each at a trial court and at a public prosecutor's office. Trainees also serve an apprenticeship outside the court system, usually in an attorney's office. After these six years, one can apply to a vacancy, either at a trial court or as a prosecutor. The second course to becoming a judge is called the outsiders. An outsider becomes a judge by applying to a position at a trial court after at least six years of experience in the field, usually as an attorney, a university professor, or at the Ministry of Justice. A committee must pass all applicants.

Positions as vice president or president of a trial court, as cantonal judge, and as justice in an appellate court are always filled with applicants who have been trial court judges prior to that. Judges retire at the age of seventy.

Next to full-time judges in all trial and appellate courts, many so-called judge-replacers or justice-replacers hear cases. These are lawyers who work as, for instance, attorneys or university professors and serve as judges part-time. Usually outsiders serve as judge- or justice-replacers for some years before becoming full-time judges. An advantage of the system of judge- and justice-replacers is that it ensures that the judiciary keeps in touch with other parts of society. Thus, the discussions between legal

academics and judges are quite open. A disadvantage is that sometimes serving as a judge-replacer involves a conflict of interest. For that reason, attorneys are not appointed as judge-replacers in their own district.

Supreme Court

According to law the Second Chamber of Parliament has an almost decisive influence on the appointments to the Supreme Court, because it is the Second Chamber's competence to put forward a list of three nominees, from which the Crown (i.e., the cabinet) has to choose. In practice, however, cooptation takes place. When there is a vacancy in the Supreme Court, the Court draws up a list of six candidates, who are recommended to become justices. Thereupon the Parliament puts, without any discussion or public attention, the first three candidates of that recommendation list on the list of nominees, of which the number one always is appointed by the Crown (*see* Van Koppen 1990).

All justices appointed after World War II had a very low political profile, as opposed to the appointments in the nineteenth century. No specific strategy or political prevalence can be discerned, when we set aside that lawyers with extreme points of view do not have a chance to be appointed. Nevertheless it is not ruled out that in private the sitting justices, when they have to draw up the list of candidates, take into account the recommended lawyers' political affinity and philosophy of life in order not to depart too much from the propottional composition of the Lower House of Parliament. This could explain why the Supreme Court succeeded up till now effectively in maintaining this cooptation system.

Bar

To become an attorney, one has to have a university law degree and start with a three-year apprenticeship at a law firm combined with courses given by the Dutch Bar Association.

IMPACT OF LAW

Probably the most notable characteristic of the Dutch judiciary and its decision making is the absence of any overt or covert political influence. That does not mean that the compromising nature of Dutch political life is not discernible in legal decision making as well. There is a tendency toward forms of mediation in any stage of procedures instead of adjudication. There is also a tendency for judges to interpret what the legislator has meant with a legal rule or to base a decision on what contracting parties intended to accomplish rather than to follow the letter of the law or the contract. For this very reason, Dutch contracts are much shorter than, for instance, American contracts, since judges tend to ignore what is written down in favor of what was meant anyway.

The compromising nature of Dutch society also is notable in a typical phenomenon that is called *tolerating policy* (*gedoogbeleid*). In many instances illegal situations are tolerated for all kinds of policy reasons, to such an extent that local government sometimes even issues a *tolerating permit* for situations that are, strictly speaking, quite illegal. Until recently, for instance, prostitution and brothels were formally forbidden, but widely tolerated. Recently, prostitution became formally allowed and government regulated. Another example is the Dutch drugs policy. Formally both hard and soft drugs are forbidden. In practice, however, the selling of soft drugs is tolerated in coffeehouses to such an extent that in Dutch *coffee shop* is a word to denote a place where you can buy drugs. These coffee shops can have a certain amount of drugs in stock. In some larger cities, houses that sell hard drugs are also tolerated. That, of course, leaves the problem of where the managers of these houses must buy their drugs, often in quantities that far exceed what is usually tolerated. This problem is simply ignored.

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See also Appellate Courts; Constitutional Review; Contract Law; Criminal Procedures; European Court and Commission on Human Rights; Inquisatorial Procedure; Judicial Review

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